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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NG.
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10/633,784

08/04/2003

Dirk Vorsteher

1003-0055

6881

7590

06/20/2006

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EXAMINER

DEUBLE, MARK A

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/633,784	VORSTEHER ET AL.	
	Examiner	Art Unit	
	Mark A. Deuble	3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/25/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,5,9,10,12,14,15 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4,5,9,10,12,14,15 and 21 is/are allowed.
- 6) ☒ Claim(s) 22-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 5-6 of independent claim 22 state “as well as on end faces cast accepting elements for means of joining conveyor pans, and with a conveyor ban base” which renders the scope of the claim impossible to ascertain because it is unclear what the phrases “as well as” refers to. It appears to be superfluous language that only confuses the meaning of the claim. Appropriate correction is required.

Claim 27 states that “the side parts are provided with cast vertical ribs for additional stiffening to the accepting pockets.” However, it is unclear from the specification how the vertical ribs 15 stiffen the accepting pockets 14 as they are located along the middle of the conveyor pan at some distance from the accepting pockets 14. This discrepancy between the claim and the specification renders the scope of the claim impossible to ascertain. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

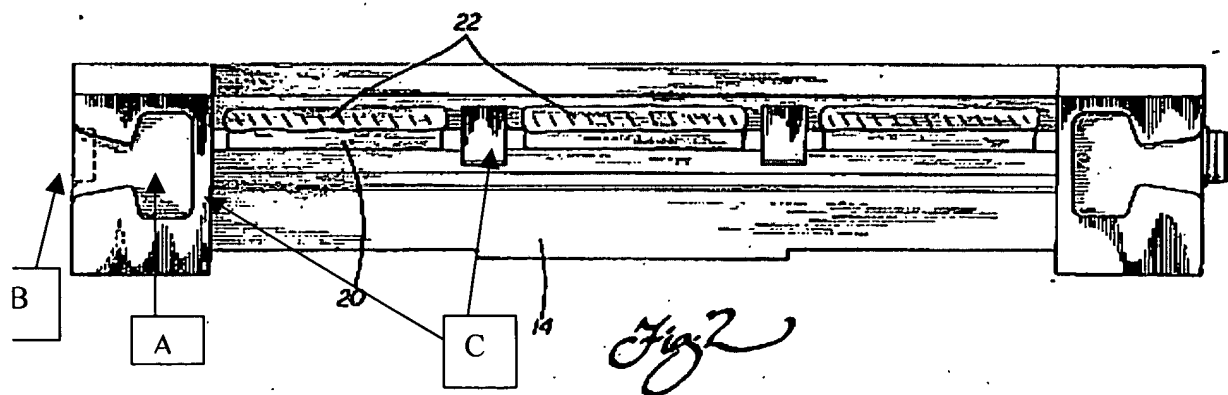
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. (U.S. Patent No. 5,131,724) in view of Merten et al. (U.S. Patent No. 5,601,341).

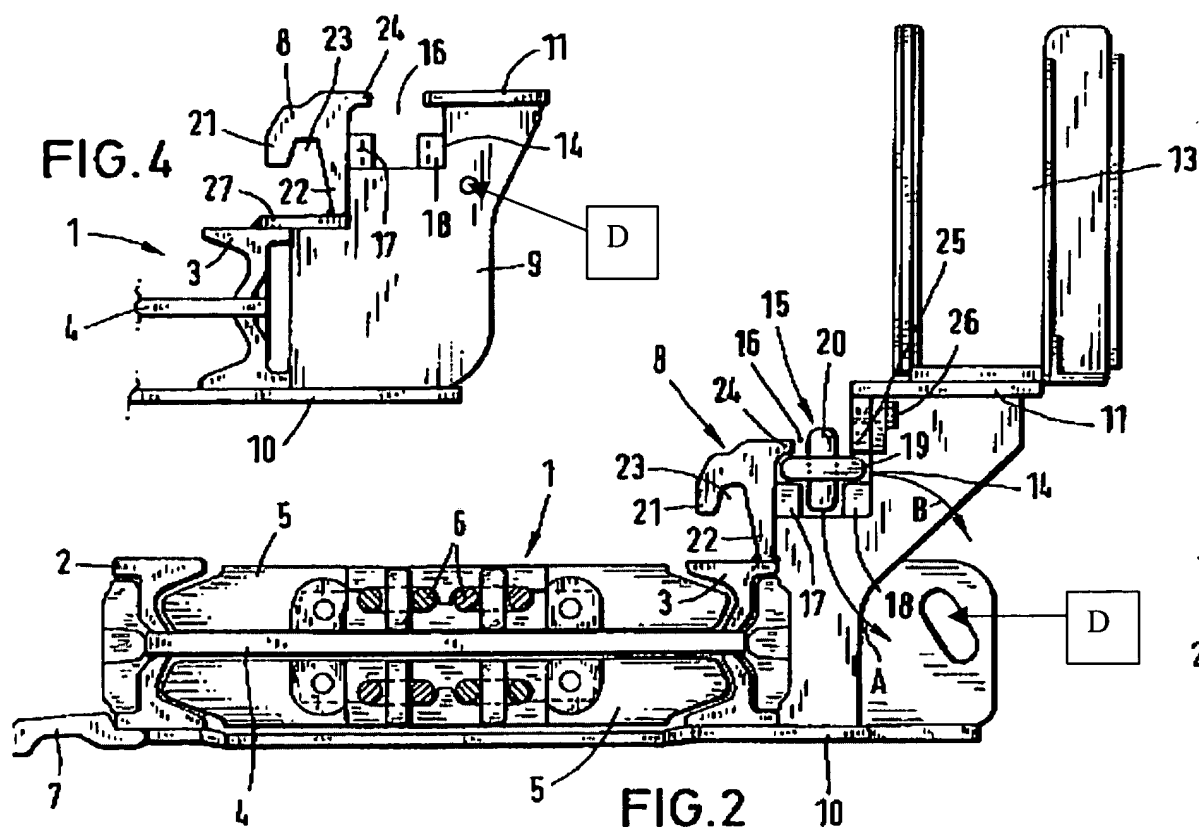
Bandy, Jr. et al. shows a conveyor pan for underground face or gate conveyors that has a pair of cast side parts 13 and 14 each of which includes vertical arms 25/26 extending over a height of the bottom and top runs of the conveyor with an essentially W-shaped in cross section (see Fig. 3). The middle portion of each vertical arm forms a crown to which a conveyor pan base 11 is welded. At the bottom side of the vertical arm, a lower case flange arm extends outwards to the rear and a foot flange extends inwards to a base plate 25 that is welded to the bottom of the foot flange to close the bottom run of the conveyor. The end faces of the side parts have accepting elements formed by pockets A, that are open at their ends B, and cast in the side parts for joining adjacent conveyor pans with a toggle bolt (not shown) and the side parts have cast vertical ribs C, some of which serve to stiffen the cast pockets (see Fig. 2 reproduced below).



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At the top of the side parts, in the region of the top run of the conveyor, the cast vertical arms have an integral end section with a generally T-shaped cross section that could be used as a machine track for an extraction machine. Thus Bandy Jr. et al shows generally all the structure required by claims 22, 24-28 except for top profiles that are exchangeably welded onto the side parts and the cast flange arm provided with weight reducing depressions on its under side as required by claim 22, except for the side and top profiles the comprise separate elements whereby the top sides of the top profiles form a machine track as required by claim 24, except for the side part on the face side that that is provided with a machine track for an extraction machine as required by claim 25, and except for the cut-outs onto which lifting eyes or similar are fastened as required by claim 28.

Merten et al. shows a conveyor pan similar to that of Bandy Jr. et al. with cast side parts 2,3 welded to a conveyor pan base 4 and a base plate 10. The side part 2 has a cast flange arm 7 extending outwards and to the rear from the side part 2 that has weight reducing depressions on its under side and a flat top side. Merten et al. teaches that this flange arm advantageously used as a machine track for a peripheral mining machine as known in the art (col. 3, ln. 57-60). Additionally, the side part 3 has vertical ribs 9 attached thereto that are provided with cutouts D onto which lifting eyes or similar could be fashioned. (See Figs. 4 and 2 reproduced below)



Merten et al. teaches that these vertical ribs 9 may advantageously be used to support a chain duct for a driving gear chain as is known in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the conveyor pan of Bandy Jr. et al. with the cast flange arm and vertical ribs of Merten et al. to provide a machine track for a peripheral mining machine such as an extraction machine and to provide a support for a chain duct for a driving gear chain. When this is done, the resulting apparatus would have generally all the structure required by claims 22 and 25-28.

In regard to the limitations of claims 22 and 24 that the side and top profiles be separate exchangeably welded elements, it should be noted making parts integral or separable has held to be obvious design choice. See *In re Larson*, 340 F.2d 965, 144 USPQ 347, 349

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(CCPA 1965) (A claim to a fluid transporting vehicle was rejected as obvious over a prior art reference which differed from the prior art in claiming a brake drum integral with a clamping means, whereas the brake disc and clamp of the prior art comprise several parts rigidly secured together as a single unit. The court affirmed the rejection holding, among other reasons, "that the use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice."); and *In re Dulberg*, 289 F.2d 522, 129 USPQ 348, 349 (CCPA 1961) (The claimed structure, a lipstick holder with a removable cap, was fully met by the prior art except that in the prior art the cap is "press fitted" and therefore not manually removable. The court held that "if it were considered desirable for any reason to obtain access to the end of [the prior art's] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose.").

5. Claim 23 rejected under 35 U.S.C. 103(a) as being unpatentable over Bandy Jr. et al. in view of Merten et al. as applied to claims 22 and 24-28 above, and further in view of Bandy Jr. (U.S. Patent No. 6,401,912).

Bandy Jr. et al. as modified in view of Merten et al. shows generally all the structure required by the claims, however, it does not disclose how the conveyor base is formed. Bandy Jr. '912 teaches that the conveyor base 26 can advantageously be fabricated of mild rollers steel to reduce the cost of the conveyor. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to form the conveyor base 11 of Bandy Jr. et al. of rolled steel to reduce the cost of the conveyor as taught by Bandy, Jr. '912. When this is done, the resulting conveyor pan would have all the structure required by claims 4 and 19.

Allowable Subject Matter

6. Claims 4-5, 9-10, 12, 14-15, and 21 are allowed.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (571) 272-6912. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

md

MARK A. DEUBLE
PATENT EXAMINER

